

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

SHAWN MCCOY, #54404-054

Petitioner,

v.

Case No.: 2:19-cv-425

MARK J. BOLSTER, Warden,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus, ECF No. 1, filed pursuant to 28 U.S.C. § 2241, and the Respondent's motion to dismiss. ECF No. 8. On April 28, 2005, a jury sitting in the United States District Court for the Southern District of New York ("the Trial Court") convicted Petitioner on four counts: (1) conspiracy to distribute and to possess with the intent to distribute fifty grams and more of crack cocaine; (2) intentional murder while engaged in a major drug conspiracy; (3) murder in the course of using and carrying a firearm; and (4) discharge of a firearm in furtherance of a drug trafficking crime. ECF No. 1 at 2; ECF No. 9, attach 1 at 2-3. The trial court sentenced Petitioner to a total of 396 months of imprisonment which included a term of 276 months on each of Counts One, Two and Three to run concurrently with each other, and 120 months on Count Four to run consecutively to the sentences on the other counts. *See* ECF No. 1 at 3; ECF No. 9 attach 1 at 4. In his petition, the *pro se* Petitioner challenges the constitutionality of this conviction and sentence.

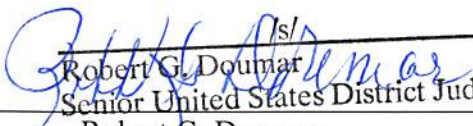
The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on July 1, 2020, ECF No. 14, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed objections with the Court.

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 14, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 8, is **GRANTED**, and the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to Petitioner and to counsel for Respondent.

It is so **ORDERED**.



/s/
Robert G. Doumar
Senior United States District Judge
Robert G. Doumar
United States District Judge

Norfolk, Virginia

Date: 8/12/2020